WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

C.M.A.Nos.29 to 33 of 1999

Union of India, owning
South Central Railway,
rep. by its General Manager,
Secunderabad. .. Appellant in
all the appeals

vs.

M/s.Southern Petrochemical
Industries Corporation Limited,
rep. by its Executive Director & Secretary,
39, Armenian Street,
Chennai-600 001. .. Respondent in
all the appeals

Civil Miscellaneous Appeal No.29 of 1999 filed under Section 23 of the Railway Claims Tribunal Act against the order dated 9.7.1998 in T.R.95 00001, on the file of the Railway Claims Tribunal, Chennai Bench.

Civil Miscellaneous Appeal No.30 of 1999 filed against the order dated 9.7.1998 in T.R.95 00002, on the file of the Railway Claims Tribunal, Chennai Bench.

Civil Miscellaneous Appeal No.31 of 1999 filed against the order dated 9.7.1998 in T.R.95 00003, on the file of the Railway Claims Tribunal, Chennai Bench.

Civil Miscellaneous Appeal No.32 of 1999 filed against the order dated 9.7.1998 in T.R.95 00004, on the file of the Railway Claims Tribunal, Chennai Bench.

Civil Miscellaneous Appeal No.33 of 1999 filed against the order dated 9.7.1998 in T.R.95 00005, on the file of the Railway Claims Tribunal, Chennai Bench.

For appellant
in all appeals : Mr.R.Gunasekaran and
Mr.V.G.Suresh Kumar

For respondent
in all appeals: Mr.Prakash Gokulaney

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

COMMON JUDGMENT

These five appeals have been filed by the Union of India, owning South Central Railway, represented by its General Manager, Secunderabad, against five different orders dated 9.7.1998, in T.R.95 00001 (in C.M.A.No.29 of 1999), T.R.95 00002 (in C.M.A.No.30 of 1999), T.R.95 00003 (in C.M.A.No.31 of 1999), T.R.95 00004 (in C.M.A.No.32 of 1999) and T.R.95 00005 (in C.M.A.No.33 of 1999), on the file of the Railway Claims Tribunal, Chennai Bench, granting the relief of refund of the excess freight paid by the respondent-applicant with interest at 12% per annum from the date of payment till the date of filing of the applications before the Tribunal, as against 18% claimed by the respondent-applicant.

2. The respondent is a public limited company. It filed claim petitions before the Tribunal seeking for refund of excess freight paid, together with interest at 18% per annum, on the ground that the train-load of DAP (i.e. Di-Ammonium Phosphate) was carried from Kakinada Port Station to different places on different dates on the longer route and therefore, paid excess freight. The details of the claims in respect of each of the applications before the Tribunal, corresponding to the Civil Miscellaneous Appeals are as follows:

C.M.A.No.29 of 1999 against T.A.No.1 of 1995:-

Claim amount: Rs.1,12,116/-
Consignment entrusted on : 18.8.1990
From : Kakinada
To : Muzzafarnagar
Via : Vijayawada, Ballarsha
(longer route) Rs.60.73/quintal

Via : Waltair New Katini junction and Duklakabad
(shorter route) Rs.55.36/quintal

C.M.A.No.30 of 1999 against T.A.No.2 of 1995:-

Claim amount: Rs.1,40,810/-
Consignment entrusted on : 18.8.1990
From : Kakinada Port Station
To : Bulanshar
Via : Vijayawada, Ballarsha
(longer route) Rs.60.33/quintal

Via : Waltair New Katini junction and Duklakabad
(shorter route) Rs.53.59/quintal

C.M.A.No.31 of 1999 against T.A.No.3 of 1995:-

https://hcservices.ecourts.gov.in/hcservices/

Claim amount: Rs.1,08,906/-
Consignment entrusted on : 1.9.1990
From : Kakinada Port Station

WEB COPY

To : Fazalganji
Via : Vijayawada, Ballarsha, Bushawal
(longer route) Rs.55.36/quintal

Via : Waltair New Katini junction
(shorter route) Rs.50.03/quintal

C.M.A.No.32 of 1999 against T.A.No.4 of 1995:-

Claim amount: Rs.1,12,116/-
Consignment entrusted on : 1.9.1990
From : Kakinada Port Station
To : Karnal
Via : Vijayawada, Ballarsha
(longer route) Rs.60.33/quintal

Via : Waltair New Katini junction
(shorter route) Rs.55.39/quintal

C.M.A.No.33 of 1999 against T.A.No.5 of 1995:-

Claim amount: Rs.1,61,339/-
Consignment entrusted on : 7.9.1990
From : Kakinada Port Station
To : Bareilly
Via : Vijayawada, Ballarsha
(longer route) Rs.59.91/quintal

Via : Waltair New Katini junction
(shorter route) Rs.52.26/quintal

The dates on which the consignments were entrusted to the Railway authorities are not in dispute. The place of origin, the place of destination of the goods and the longer route taken by the Railways in respect of each consignment, are also not in dispute. There is no controversy with regard to the rates per quintal, which differ between the shorter routes and the longer routes. Therefore, on the basis of the excess freight charges wrongly collected on the longer routes, the refund of the claims were made and the same was allowed by the Railway Claims Tribunal as stated above. The Railway Claims Tribunal passed the following orders in each of the claim petitions:-

C.M.A.No.29 of 1999 against TR.95 00001:-

> "Therefore, the Application is allowed in part awarding a sum of Rs.82,661/- being the refund of excess freight plus the sum of Rs.19,637/- being the interest on the said sum from the respondent-railways together with interest at 12% per annum on the sum of Rs.82,661/- from the date of Application till

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

the date of realisation with proportionate costs."

C.M.A.No.30 of 1999 against TR.95 00002:-

"Therefore, the Application is allowed in part awarding a sum of Rs.1,03,816/- being the refund of excess freight plus the sum of Rs.24,663/- being the interest on the said sum from the respondent-railways together with interest at 12% per annum on the sum of Rs.1,03,816/- from the date of Application till the date of realisation with proportionate costs."

C.M.A.No.31 of 1999 against TR.95 00003:-

"Therefore, the Application is allowed in part awarding a sum of Rs.80,404/- being the refund of excess freight plus the sum of Rs.19,001/- being the interest on the said sum from the respondent-railways together with interest at 12% per annum on the sum of Rs.80,404/- from the date of Application till the date of realisation with proportionate costs."

C.M.A.No.32 of 1999 against TR.95 00004:-

"Therefore, the Application is allowed in part awarding a sum of Rs.70,503/- being the refund of excess freight plus the sum of Rs.16,431/- being the interest on the said sum from the respondent-railways together with interest at 12% per annum on the sum of Rs.70,503/- from the date of Application till the date of realisation with proportionate costs."

C.M.A.No.33 of 1999 against TR.95 00005:-

"Therefore, the Application is allowed in part awarding a sum of Rs.1,19,898/- being the refund of excess freight plus the sum of Rs.27,627/- being the interest on the said sum from the respondent-railways together with interest at 12% per annum on the sum of Rs.1,19,898/- from the date of Application till the date of realisation with proportionate costs."

The present appeals are filed against the above stated orders of the Tribunal.

https://hcservices.ecourts.gov.in/hcservices/

3. For the purpose of transporting the said goods, the respondent/claimant, who is the consignor, booked the cargo under Forwarding Note. Based on such Forwarding Note, the Railway authorities issued Railway Receipt for the abovementioned route and quantified the rate per quintal for the goods to be carried. It is not in dispute that the Forwarding Note in respect of each of the consignments was presented by the authorised person of the respondent/applicant to the Railway authority and on receipt of such Forwarding Notes, the Railway Receipts were issued and freight charges for the goods transported have been paid at the loading point in respect of the goods consigned.

4. According to the respondent/claimant, the goods should be transported through the shortest route from Kakinada Port Station to the place of ultimate destination. However, it is stated in the claim petitions that the Railway authorities have taken a longer route and thereby, freight charges in excess have been paid per quintal and therefore, the claim petitions came to be filed in respect of each of the five consignments transported by the Railway authorities. In all the five claim petitions, the claim was based on the Forwarding Notes and the Railway Receipts which were marked as Exhibits before the Tribunal, the details of which are extracted below:

C.M.A.No.29 of 1999 (against T.A.No.1 of 1995):-

Sl. No.	Nature of the documents	Date	Exhibit Nos.
1	Copies of Railway Receipts	18.8.1990	A-2 to A-5
2	Forwarding Notes	-	B-1 to B-4
3	Copies of invoices (Certified copies of Railway Receipts)	18.8.1990	B-5 to B-8

C.M.A.No.30 of 1999 (against T.A.No.2 of 1995):-

Sl. No.	Nature of the documents	Date	Exhibit Nos.
1	Copies of Railway Receipts	18.8.1990	A-2 to A-5
2	Forwarding Notes	-	B-1 to B-4
3	Copies of invoices (Certified copies of Railway Receipts)	18.8.1990	B-5 to B-8

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

C.M.A.No.31 of 1999 (against T.A.No.3 of 1995):-

Sl. No.	Nature of the documents	Date	Exhibit Nos.
1	Copies of Railway Receipts	21.8.1990	A-2 to A-5
2	Forwarding Notes	-	B-1 to B-4
3	Copies of invoices (Certified copies of Railway Receipts)	21.8.1990	B-5 to B-8

C.M.A.No.32 of 1999 (against T.A.No.4 of 1995):-

Sl. No.	Nature of the documents	Date	Exhibit Nos.
1	Copies of Railway Receipts	1.9.1990	A-2 to A-6
2	Forwarding Notes	-	B-1 to B-5
3	Copies of invoices (Certified copies of Railway Receipts)	1.9.1990	B-6 to B-10

C.M.A.No.33 of 1999 (against T.A.No.5 of 1995):-

Sl. No.	Nature of the documents	Date	Exhibit Nos.
1	Copies of Railway Receipts	7.9.1990	A-2 to A-5
2	Forwarding Notes	-	B-1 to B-4
3	Copies of invoices (Certified copies of Railway Receipts)	7.9.1990	B-5 to B-8

Based on the above documents, the claim petitions have been filed by the claimants.

5. The contention of the respondent-claimant is that the Railway authorities have failed to transport the goods on the shortest route, and thereby the claimant has been made to pay the excess freight amounts. Relying upon the General Rules for Acceptance, Carriage and Delivery of Goods (as contained in Indian Railway Conference Association - Goods Tariff No.41 - Part-I (Volume I), (hereinafter referred to as "the Rules"), in particular to Rule 125(1)(b), it was contended that in the absence of specific instructions in writing from the sender or his authorised agent to the contrary, goods will be despatched by the shortest route at the charges by the cheapest route, i.e., the route by which the freight charges are at the lowest. It is further contended that Rule 125(1)(d) of the Rules provides that when the consignment is required to

https://hcservices.ecourts.gov.in/hcservices/

be charged and forwarded by other than the shortest route or the cheapest route, the sender or his authorised agent must give written and signed instructions on the Forwarding Note as "To be forwarded via ..... a dearer route" and the Railway Receipt and its counterfoils must be endorsed by the booked station staff as "Dearer route selected by sender". Since the consignment was booked through longer route and on a higher Freight Charges without such consent, the claim is made.

6. The claimant first made an application to the Chief Commercial Superintendent (Goods Refund), in terms of Section 106 of the Railways Act, praying for refund of the excess Freight Charges paid under various Railway Receipts, which was rejected by the authority on the ground that there were restrictions in the movement of goods during the relevant period. Aggrieved therefrom, the claim petitions have been filed before the Railway Claims Tribunal claiming for refund of the amounts specified in the claim petitions together with interest at 18% per annum.

7. A counter has been filed before the Tribunal by the Railway authorities, wherein, they denied the claim. It will be useful to refer to the relevant portion of the counter, which reads as follows:

> "8. Regarding para 7 of the Application, it is admitted that the Applicant has booked their goods vide the booking particulars as mentioned vide para 6 supra. Though the normal route for carriage of the subject traffic is via Visakhapatnam and New Katni, the same was booked via Vijayawada, Balharsha, Bhusaval in view of the restrictions imposed during the period under reference for the movement of goods traffic via Visakhapatnam. Therefore the freight charges have been levied by the route to the moved only as the same is just and reasonable. The Applicant has been verbally informed of the very fact and therefore he has readily accepted the booking by the route booked in the instant case and also paid the freight charges accepting the RRS in question without any protest. Hence the Applicant has no right or reason to claim any difference of freight charges which is not at all due to them. The very fact that no endorsement on the F/note in terms of Rule 125 of Goods Tariff has not been obtained has no weight and not obtaining the endorsement is only an omission on the part of the Railway Staff.
>
> ii) The booking of the subject traffic via Vijayawada, Balharsha and Bhusaval is not due to oblivious reasons or mis-interpretation of routing rules as alleged but due to the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

restrictions in force for movement of goods traffic by the normal route during the period in question on which fact the Applicant was very much aware of. As already stated, though the shortest route for carriage of the subject traffic was via Visakhapatnam, it is reiterated that the Applicant's traffic in question was booked and charged via Vijayawada due to the restrictions for movement of goods traffic by the normal route during the period in question and this fact was advised by the Chief Commercial Manager, Secunderabad vide his letter dated 22/26.2.1991." (emphasis supplied)

8. The Tribunal framed the following issues for consideration:

"(i)Whether there were operational restrictions for movement of subject consignment by the shortest and cheapest route at the time of booking of the consignment?

(ii) Whether such restrictions have been notified?

(iii) Whether the collection of freight for the consignment by a longer route legal and in accordance with the rules?

(iv) What relief?"

9. Considering the material documents and evidence available on record, the Tribunal passed an order accepting the contention of the claimant and granted the relief in respect of the refund as claimed in the claim petitions, however, the interest was determined at 12% p.a. As against such orders of the Tribunal, the present appeals have been filed by the Railways.

10. Before proceeding to go into the merits of the appeals, it will be necessary to refer Rules 123 and 125 of the Goods Tariff Part-I, Vol.I, which read as follows:

"Rule 123: Declaration of goods -

(1) Every consignment of goods when handed over to the Railway for despatch must be accompanied by a Forwarding Note, which must be signed by the sender or his authorised agent, and must contain a declaration of the weight, description in accordance with Section 66 of the Railways Act, 1989 and destination (Station and Railway on which situated) of the goods consigned, and indicate in the column provided for this purpose the route by which

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

the goods are to be booked as provided for in Rule 125. In the absence of any such instructions as to the route by which the goods are to be booked, the goods will be despatched by the correct route according to the rules for the routing of goods for the time being in force.

(2) Printed forms of the Forwarding Note are available at all goods booking stations on application to the Station Masters or Goods Clerks. The forms of Forwarding Notes specified by the Central Government in accordance with Section 64 of the Railways Act, 1989 are shown in Annexure 'A'.

(3) Merchants and traders must satisfy themselves that their packages are properly addressed and their Forwarding Notes correctly written out, as the Railway accepts no responsibility as to accuracy in either case and will hold senders liable for any mistake or misdeclaration.

(4) Rules for the indent, allotment and supply of wagons are given in Chapter-II.

Rule 125: Routing of goods traffic:-(1) (a) The term "shortest route" wherever appearing in this rule, is the shortest route between the forwarding and receiving stations as determined upon the basis of the distance notified by Railways as being the distance for charge. For purposes of determining the shortest route in cases in which break-of-guage transhipment is involved, each break-of-guage transhipment is to be reckoned as equivalent to 200 kilometres.

(b) In the absence of specific instructions in writing from the sender or his authorised agent to the contrary, goods will be despatched by the shortest route at the charges by the cheapest route, i.e., the route by which the freight charges are at the lowest.

(c) When a consignment is required to be despatched by the cheapest route, although such route is not the shortest route, the sender or his authorised agent must give written and signed instructions on the Forwarding Note as under:-

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

"To be forwarded via .... at my request."

The Railway Receipt and its counterfoils must also be endorsed by staff of the forwarding station as under:

"Booked route selected by sender".

(d) When a consignment is required to be charged and forward by other than the shortest route or the cheapest route the sender or his authorised agent must give written and signed instructions on the Forwarding Note as under:-

"To be forwarded via.... a dearer route" and the Railway Receipt and its counterfoils must be endorsed by the booking station staff as under-

"Dearer route selected by sender."

(e) In the event of the shortest route, when also the cheapest being partially or wholly closed for traffic, the correct route for carriage of traffic shall be the next shortest open route at the charges by the next cheapest open route. In such a case, the sender or his authorised agent should give written and signed instructions on the Forwarding Note as under:-

"To be charged by the next cheapest open route, the cheapest route via ..... being closed."

The Railway Receipt and its counterfoils must be endorsed by the booking station staff as under:-

"Charged by next cheapest open route, at senders request, the cheapest route via ..... being closed; and booked via ...."

(f) In the event of the shortest route when not the cheapest being partially or wholly closed for traffic, the goods may be despatched by the next shortest open route at the charges by the cheapest route. In such cases the Railway Receipt and its counterfoils must be endorsed by the staff of the forwarding station as under:-

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

"Booked via ..... the correct route being partially closed/closed."

(g) In the event of charges being equal or two by more open routes, the sender or his authorised agent may elect to have his goods charged and despatched by any open route and, where the route so selected is not the shortest route, the sender or his authorised agent must give written and signed instructions on the Forwarding Note as under:-

"To be forwarded via..... at my request."

The Railway Receipt and its counterfoils must be endorsed by the staff of the forwarding station as under:-

"Booked route selected by sender."

(h) Notwithstanding anything contained in Rule 125(1)(b), on the Central Government issuing an order under Section 71(1)(b) of the Railways Act, 1989 that goods specified in the order can be carried and charged by a route specified therein or by any of the two alternative routes specified therein, the goods will be chargeable by the specified route or any of the specified alternative routes over which such goods are actually carried, even if it is not the cheapest route.

(2) Where a sender has endorsed a Forwarding Note to the effect that goods should be despatched by a dearer route and the goods are carried by that route, the consignment will be charged at the rate applicable by that route, even though an endorsement to the effect that the dearer route was selected by the sender does not appear on the invoice or is defective.

(3) When there are separate goods booking stations at the same railway centre or separate goods sheds belonging to the same Railway or different railways at the same station, the correct route shall be determined from amongst such routes only as are open from the particular station or goods shed at which goods have been tendered for despatch.

https://hcservices.ecourts.gov.in/hcservices/

(4) Regarding booking of explosives by dearer route, see relevant rules in the I.R.C.A. Red Tariff in force.

WEB COPY

(5) For the purpose of rating and routing, a transhipment point should be treated as closed if no arrangements exist there for transhipment of liquids in bulk vide Rule 180.

Note:

(1) A consignment may be despatched by a route other than the normal or elected route if it becomes necessary, to do so on account of causes beyond the control of Railway Administration or due to congestion in yards or other operational reasons.

(2) When the Central Government issues any order under Section 71(1)(b) of the Railways Act, 1989 to carry any goods or class of goods by such route or routes and at such rates as may be specified in the order, the same will apply notwithstanding what is stated above."

11. Learned counsel for the appellant/Railways would contend that on a conjoint reading of Rule 123 relating to "declaration of goods" with Rule 125 relating to "routing of goods traffic", the Railway authorities have to go by the declaration made by the person who has consigned the goods and in this case, the Forwarding Notes, namely Exs.B-1 to B-4 in all the appeals, except Exs.B-1 to B-5 in C.M.A.No.32 of 1999, clearly specify the point of loading and the destination and the route by which the goods should be carried. Going by the declaration made in the Forwarding Notes, it should be safely presumed that the party intended that the goods should be carried on a particular route and therefore, the Railway authorities accepted the Forwarding Notes and the Freight Charges were accordingly levied for the consignments. It is further contended by the appellant/Railways that the authorities acted on the instructions of the claimant and therefore, the Railway authorities cannot be held responsible for the excess freight charges.

12. Learned counsel for the appellant-Railways, relying on Rule 125(1)(b) of the Rules, would contend that in the absence of specific instructions in writing from the sender or his authorised agent to the contrary, the goods will be despatched by the shortest route at the charges by the cheapest route, i.e. the route by which the freight charges are at the lowest. In the instant case, there is specific instruction from the claimant that the goods shall be despatched from Kakinada Port Station to various destinations and the route through which it has to be despatched also has been specified. Therefore, a conjoint reading of Rule 123 with Rule 125 of the Rules, makes it clear that the claimant has voluntarily chosen a particular route for the consignment of the goods.

https://hcservices.ecourts.gov.in/hcservices/

13. As regards the counter filed by the Railways before the Tribunal, reliance was placed on Ex.B-9, the notification relating to restrictions, issued by the General Manager (Operations), South-eastern Railway, dated 8.8.1990. It is apparent from the said notification that there was a restriction on the movement of goods carried during the period 8.8.1990 and 13.8.1990. Based on such restriction, the goods in question were taken through the longer route. However, learned counsel for the appellant/Railways would fairly submit that, that defence would not be available to the appellant/Railways, in view of the fact that the consignment in question in all these five appeals, were accepted for despatch long after the restriction ceased to be in force, namely the first of such consignment was booked on 18.8.1990. Therefore, the restriction as specified under the abovesaid notification will not have any application to the facts of the present case.

14. It is pertinent to refer to Section 64 of the Railways Act, 1989, dealing with "Forwarding Note", which reads as follows:

> "Section 64: Forwarding Note:--
>
> (1) Every person entrusting any goods to a railway administration for carriage shall execute a forwarding note in such form as may be specified by the Central Government:
>
> Provided that no forwarding note shall be executed in the case of such goods as may be prescribed.
>
> (2) The consignor shall be responsible for the correctness of the particulars furnished by him in the forwarding note.
>
> (3) The consignor shall indemnify the railway administration against any damages suffered by it by reason of the incorrectness or incompleteness of the particulars in the forwarding note."

15. Learned counsel for the appellant/Railways, relying upon Section 64 of the Railways Act, would state that the consignor is responsible for the correctness of the particulars furnished by him in the Forwarding Note. Learned counsel would further submit that whatever that has been stated in the Forwarding Note, has been accepted by the Railway authorities, which includes the route by which the consignment has been taken. In such view of the matter, there is no reason to find fault with the Railways, as they have acted only on the instructions of the claimant.

16. Learned counsel for the respondent/claimant would however submit that the only defence taken by the Railway authorities, is available in paragraph 8 of the counter filed before the Tribunal in the claim petitions, wherein, the stand taken by the Railway

https://hcservices.ecourts.gov.in/hcservices/

authorities is that restriction imposed during the relevant period was the reason for the Railway authorities in taking the longer route. Learned counsel for the respondent/claimant would further contend that in view of the clear indication in the notification that restriction will apply to the period from 8.8.1990 to 13.8.1990 only, the Railways is bound to refund the excess freight charges and therefore, pleaded that the well-reasoned orders of the Claims Tribunal should not be interfered with.

17. The Railway Claims Tribunal, after going into merits of the rival contentions, came to the conclusion as follows:

> "10. We should also not forget for a moment that the restrictions contained in Exs.B-9 and B-10 was only from 8.8.90 for five days and it had expired on 13.8.90. The suit consignment which is a train load was booked for carriage on 18.8.90. As such, the suit consignment is not governed by the restrictions imposed under Exs.B-9 and B-10 as by the time the suit consignment was booked for carriage, the period of restriction had been expired.
>
> 11. There is nothing on record that the restrictions imposed under Exs.B-9 and B-10 have been duly notified. As already indicated above, it is not brought out whether the authority that has issued the restriction under Exs.B-9 and B-10 had the power for restriction of movement of particular traffic during the particular period. As already indicated above, it is only the Central Government which can issue such a notification under S.71 of the Railways Act, 1989.
>
> 12. The burden of proving these two issues is very much on the respondent-railways and that burden has not been discharged. The documents produced by the respondent-railways which are Exs.B-9 and B-10 would not go to show that there was an operational restriction of movement of the suit consignment by the shortest route at the time of booking of the same which is on 18.8.90 as the restrictions imposed under Exs.B-9 and B-10 was only for a period of 5 days and that period had expired by 13.8.90."

18. As regards the applicability of Rule 125 of the Rules, the Tribunal came to hold as follows:

https://hcservices.ecourts.gov.in/hcservices/

> "17. ...

WEB COPY

> ... In the case on hand, as could be seen from the forwarding notes Exs.B-1 to B-5 the applicant who is the sender has not given any specific instructions for carriage of the suit consignment either by the dearer route or the next cheapest open route as the cheapest route is being closed/partially closed."

19. The Tribunal also relied on various clauses under Rule 125 to state that even assuming that another route taken, which is other than the shortest or cheapest route, the consent of the consignor or his authorised agent should be obtained in the Forwarding Note. In particular, the various instructions contained in the Forwarding Note are to be read in consonance with the provisions of Rule 125. Therefore, the Tribunal came to the conclusion that since appropriate endorsement has not been obtained by the Railway authorities for transporting the goods on the longer route, the excess freight charges paid by the claimant should be refunded and therefore, the claim petitions were allowed. However, as regards the interest, the Tribunal instead of granting 18% per annum as claimed, granted interest at 12% per annum.

20. In the memorandum of the grounds of appeals, it is stated that the respondent-claimant had the full knowledge of the route through which the consignment was to be carried and paid the required charges. It is contended that in Exs.B-9 and B-10, there were certain restrictions for the movement of goods through the cheapest route. It is also contended that in Exs.B-1 to B-4, the Forwarding Notes, the respondent did not fill up the required columns and they failed to exercise their option as to whether the goods were to be carried through the dearer route or the cheapest route and having not exercised their option, and in view of the restriction in the movement of goods, the Railways had carried the goods through the longer route. In effect, the thrust of the contention made in the appeals is only on the ground that there was restriction with regard to the movement of goods at that point of time and only for that reason, the goods were despatched through the longer route.

21. As stated earlier, it has been fairly conceded by the counsel for the appellant/Railways that the restriction was only for a period of five days and does not cover the dates on which the consignments in issue were booked. That apart, relying upon Rules 123 and 125 of the Rules, it is stated that since the respondent-Company themselves have selected the route and paid the charges, they cannot turn around and claim refund of the excess freight charges paid.

22. Rule 125(1)(d) of the Rules is very specific in that, when the consignment is required to be charged and forwarded by other than the shortest route or the cheapest route, the sender or his authorised agent must give written and signed instructions on the Forwarding Note as "To be forwarded via ..... a dearer route" and

https://hcservices.ecourts.gov.in/hcservices/

the Railway Receipt and its counterfoils must be endorsed by the booked station staff as "Dearer route selected by sender". There is, therefore, a condition imposed on the Railway authorities to take the consent of the sender that the goods have to be transported on the dearer route. No such endorsement was taken on the Forwarding Notes and this fact is not disputed. When there was no restriction whatsoever, the question of the consignor accepting the longer route does not arise. It is incumbent on the Railway authorities to take the consignment by the shortest route, going by Rule 123 read with 125 of the Rules.

23. The contention of the appellant-Railways is that in the Forwarding Notes, the longer route taken has been mentioned and in the Credit Notes also, the longer route taken has been mentioned and therefore, when the freight charges were voluntarily paid by the respondent-applicant, it should be accepted that the respondent-applicant consciously agreed for transportation of the goods on the longer route. Such a plea on the face of the rule is fallacious and not acceptable. On the contrary, the respondent-applicant would submit that whatever the route mentioned in the Forwarding Notes and the Credit Notes, is based on the representation of the Railway authorities that there was restriction imposed in the movement of goods on the shortest route. Therefore, it is clear that both parties were under the impression that there was certain restrictions in the movement of goods and therefore, longer route was taken. It is also stated in paragraph 8 of the counter affidavit filed before the Tribunal that such information was given verbally to the respondent-applicant and the same was accepted by them and the freight charges were paid.

24. Without any further adjudication, it is clear that the restrictions imposed in Exs.B-9 and B-10, cannot be made applicable to the instant case, as the period of restriction was over even as early as on 13.8.1990 and in the present case, the goods were booked only on 18.8.1990 and on subsequent dates. Therefore, it is obvious that only based on the representation of the Railway authorities that the longer route was mentioned in the Forwarding Notes. The fact remains that the Railway authorities are bound by Rule 125(1)(a)(b) and Rule 125(1)(d). Therefore, in the absence of specific endorsement by the respondent-applicant that the longer route can be taken, the Railway authorities cannot claim that they will be entitled to claim higher freight charges merely because in the Forwarding Notes, the longer route had been stated. The requisite endorsement is absent and that supports the case of the respondent/claimant.

25. The Tribunal, based on various reasons, came to the conclusion that the Railway authorities have failed to carry the goods through the shortest route at the cheapest rate and such finding of the Tribunal is based on the evidence available on record and also on the "General Rules for Acceptance, Carriage and Delivery of Goods" (as contained in Indian Railway Conference Association - Goods Tariff No.41- Part-I (Volume I), which are binding on the Railway authorities. Hence, there is no reason to

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

interfere with the finding of the Tribunal in favour of the respondent-applicant. The impugned orders of the Tribunal, therefore required to be confirmed. Accordingly, the same are confirmed.

26. As regards the interest claimed by the respondent-applicant on the excess freight charges, from the date of the applications till realisation, the Tribunal held as follows:

> "33. Similar question arose before their lordships of the Supreme Court in Union of India vs. Steel Stock Holders' Syndicate, Poona (1976) 3 S.C.R. 504. In the Head Notes 4(a) it has been observed that there is no question of S.73 of the Contract Act over-riding the provisions of the Interest Act because in the instant case the Interest Act has no application at all inasmuch as no interest is claimed by the plaintiff: but interest has been used as a measure to determine the compensation which the respondent could seek against the appellant for its negligence in causing inordinate delay in the delivery of the goods. The respondent had only claimed nominal damages for the loss because of the amount of money locked up for more than six months due to late delivery.
>
> 34. The Division Bench of the Hon'ble High Court of Guwahati in Union of India vs. Food Corporation of India ((1988)(1) C.C.C. 275) were considering Section 78-B of the Railways Act. From the Head notes it is evident that a question was posed whether the plaintiff is entitled to have a decree for the interest claimed for realisation of the excess freight as paid by the defendants? The same has been answered in the affirmative."
>
> 35. So it is evident from the aforesaid decisions interest is payable on the excess freight that has been collected by the railways. So the applicant is entitled to claim interest on the excess freight of .... that has been prepaid at the forwarding station. As indicated above, the applicant has claimed interest at 18% per annum. It appears to be excessive. It is reasonable to award interest at 12% per annum. ... So, the applicant is entitled to the refund of excess freight of .... together with interest on the said sum amounting to ..... from the date of payment till the date of filing of the application."

https://hcservices.ecourts.gov.in/hcservices/

27. Thus, the Tribunal came to the conclusion that the applicant is entitled to succeed in the claim together with interest. Though the respondent-claimant has claimed interest at commercial rates at 18% per annum, it is obvious that the Tribunal had taken into consideration the rate of interest applicable to the year 1990 as per Banking Regulations and accordingly, awarded 12% interest p.a. Such determination appears to be reasonable and correct and the same is confirmed.

28. In the result, all the appeals are dismissed. No costs.

cs/ts.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The General Manager,
   South Central Railway,
   Secunderabad.

2. The Registrar,
   The Railway Claims Tribunal,
   Chennai Bench.

3. The Record Keeper,
   VR Section,
   High Court, Madras.

1 cc to Mr.V.G.Suresh Kumar, Advocate, SR.48941
2 ccs to Mr.Prakash Gokalaney, Advocate, SR.48242

vc (co)

dv/14.12.06

Common Judgment in
C.M.A.Nos.29 to 33 of 1999

https://hcservices.ecourts.gov.in/hcservices/